IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6648 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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R N PANA

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

No one appears for Respondent Nos. 1-3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 29/08/2001

ORAL JUDGEMENT

1. This matter has been listed for final hearing under the senior citizens matter. The petition is pending since 1988.

2. Through, this Special Civil Application, the petitioner has sought the reliefs with regard to the pension, death-cum-retirement benefits and commutation of pension etc. from due date with 12% interest on delayed payments.

3. The petitioner came with the case that he had joined Government service on 24/2/1961 and by dint of hard labour and devotion to duty, he had attained the position as Superintendent of Prohibition and Excise i.e. Class II under the Gujarat State Service. By order dated 14.12.1997, passed by the Government of Gujarat Social Welfare Department in exercise of the powers conferred by Clause (aa) of Sub-Rule (1) of Rule 161 of Bombay Civil Service Rules, 1959, directing his compulsory retirement in the interest of public service with effect from the delivery of this order and in the order it was also mentioned that he shall be paid a sum equivalent to his pay and allowances for three months in lieu of 3 months' notice. The order was issued in the name of the Governor of Gujarat. On the same date i.e. 14/12/1987, a Memorandum was sent to the petitioner by the Director of Prohibition & Excise, Ahmedabad, stating that the departmental inquiry which has been pending against him and in which the inquiry report has been received, which was under the scrutiny shall continue even after his retirement. It is very clear from the above order, that in lieu of 3 months' notice amount was not paid to the petitioner simultaneously to the said order and the petitioner was subjected to compulsory retirement on the ground of "Interest of Public Servant", while the inquiry was pending against him. However, so far as this Special Civil Application is concerned, the order of compulsory retirement is not under challenge. The prayer made in the petition is only for pension and the retirement dues i.e. death cum gratuity, commutation etc. The present petition was filed in this Court on 29.9.1988. In this Special Civil Application Notice was issued and made returnable on 17.10.1988. On 17.10.1988, the Rule was issued and the following order was passed :-

" By way of interim relief no direction as prayed for can be given in the facts of the case, much more so because it is stated at the Bar by the learned counsel for the respondents that the petitioner was involved in some cases wherein his integrity has doubted and in fact some criminal

prosecution is also contemplated from the order announced also. It appears that the statement made by the learned counsel for the respondents is not without substance because there is some reference to departmental enquiry. Hence, the facts of the case do not justify and interim direction to the respondents - authorities as prayed for in the petition. However in the facts and circumstances of the case the respondents are directed to file affidavit-in-reply latest before December 15, 1988. Thereafter, it will be open to the petitioner to request the Court for fixed date of hearing."

4. The file which is available before the Court shows that no reply whatsoever has been filed by the respondents although, there was a specific direction on 17.10.1988 that they should file their affidavit-in-reply latest before December 15, 1988. Despite the pendency of the petition for more than 12 years, no care has been taken by the respondents to file any reply in this petition and the averments made by the petitioner in the petition remain uncontroverted.

5. However, Mr.H.J.Nanavati, learned counsel for the petitioner has orally submitted that so far as the Criminal Case is concerned, in the Criminal Case, the petitioner was acquitted for the offences under The Bombay Denatured Spirit Rule 25(1)(2) and Rule 38(2) of the Prohibition Excise Manual (3) read with Section 4(1)(5) of the Prohibition Act. Not only that he was acquitted in the Criminal Case No.1215 of 1991, by order dated 26.2.93, the Court also directed by the very same order to issue notice to the Amaldar one Khumaji, Shakraji Bungalow No.631, Himmatnagar Town Police Station and the complainant K.M.Vasava, Inspector, Prohibition and Excise and the Office of the Superintendent at Himmatnagar under Section 250 of the Criminal Procedure Code for filing of this complaint. It is also orally stated by Mr.Nanavati, learned counsel for the petitioner before this Court that no communication after 14.12.1988, has been sent with regard to the fate of the inquiry and Mr.Nanavati has also submitted that his client has not contacted him for the last about 2 to 3 years and he only knows that the petitioner was paid the provisional pension.

6. It is very clear that the order dated 14.12.1987 was an order of compulsory retirement not by way of penalty and it was an order under Sub Clause (aa) of Sub Rule (1) of Rule 161 of the Bombay Civil Service Rules,

1959. Thus, the petitioner could not be deprived of any of his earned benefits. The petitioner, therefore, is entitled to all the retiral benefits and he has to be paid the pension for the entire period of his qualified service till the date of his retirement and he is also entitled to payment of death-cum-retirement gratuity benefits as well as commutation of the pension with effect from the due date. About, the payment which has not been made so far the petitioner is also entitled to the interest at the rate of 12% p.a. thereon and on all such dues, which have not been paid uptil now. In case, any payment has been made, the same shall be adjusted and remaining amount shall be paid to the petitioner against all these items and on such remaining amount petitioner shall be entitled to interest as above, from due dates. The specific order about his dues or the dues received cannot be given in this order as the details are not available before this Court, in absence of any reply of the respondents and no one is present on behalf of respondents even to say any thing orally in this regard.

7. The aforesaid directions shall be carried out within three months from the date the certified copy of this order is produced by the petitioner before the concerned authorities or the date on which the writ is served upon the concerned authorities through the Court, whichever is earlier.

8. This Special Civil Application is allowed in terms as aforesaid. Rule is made absolute accordingly with costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid to the petitioner.

(M. R. Calla,J.)

(vrp)